

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

THICKSTUN BROTHERS EQUIPMENT COMPANY, INC.

Employer

and

Case 9-RC-17172

PLUMBERS & PIPEFITTERS UNION LOCAL 189,
AFL-CIO-CLC

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The Employer, a corporation, with an office in Columbus, Ohio, is engaged in the business of selling, installing, removing, and servicing underground and aboveground fuel storage tanks and their associated equipment at various locations throughout the United States.

The Employer specializes in the construction of aviation fuel systems, but also performs construction work related to the dispensation of a wide range of fuels, oils, fluids, and other materials. The largest of the Employer's construction projects is located at Rickenbacker Air Force Base in Columbus, Ohio, herein referred to as Rickenbacker. The Employer also maintains a shop in Columbus, Ohio where it regularly fabricates pump skids and engages in the fabrication and manufacture of other types of equipment as needed. ^{1/} There is no history of collective bargaining affecting any of the approximately 18 employees in the unit found appropriate.

The Petitioner seeks to represent a "craft unit" comprising all of the Employer's pipe fitters, welders, and helpers who perform work within the jurisdictional definition set forth in the current constitution of its parent body, the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada. In this regard, the Petitioner would exclude from the unit the Employer's construction employees who do not perform traditional craft duties as described by its constitution or who perform such duties on a de minimus basis. In the alternative, the Petitioner has indicated a willingness to represent and proceed to election in a single unit encompassing all of the Employer's employees who are engaged in the construction, deconstruction, fabrication, and repair of underground and aboveground tanks and their associated equipment. Contrary to the Petitioner, the Employer asserts that a single unit comprised of its core or long term employees who perform construction related duties and its employees performing construction related tasks at Rickenbacker is not appropriate for purposes of collective-bargaining because such employees lack a community of interest. In this connection, the Employer maintains that only separate units, one comprised of all its employees performing construction related work at Rickenbacker and another comprised of its core employees who perform work in its shop and on other construction projects are appropriate for collective bargaining. In addition, the Employer apparently contends that a unit limited to pipe fitter craft employees is inappropriate because many of its employees do not perform craft defined duties and other of its employees perform many other non-craft tasks in addition to traditional pipefitter craft work. Thus, the Employer contends that the "craft" employees sought by the Petitioner do not possess a separate and distinct community of interest from the Employer's other employees who work on its construction projects. The Employer also appears to assert that the Petitioner cannot represent a wall-to-wall unit of its employees because the jurisdictional definitions set forth in the Petitioner's constitution preclude it from representing many of the Employer's construction project employees.

Finally, although it initially declining to take a position at the hearing, the Petitioner, in its brief, maintains that Randall Phipps exercises only sporadic and irregular supervisory functions within the meaning of Section 2(11) of the Act. Accordingly, the Petitioner apparently seeks to include Phipps in the unit. The Employer also initially declined to take a position with respect to the supervisory status of Phipps. However, the Employer argues in its brief that

^{1/} Pump skids are manufactured to specification with different sizes and types of pipe to achieve a certain flow rate. A pump is then mounted on the skid and a spill containment device is installed. A fuel filter is also sometimes installed. The pump is wired, painted and an alarm box is placed on it. The pump is then tested to ensure that it does not leak.

Phipps is a statutory supervisor with respect to his interaction with certain of the Employer's employees at its shop.

Before addressing the issue of the appropriate bargaining unit, I note that the Employer appears to imply through record testimony and in its brief that the Petitioner cannot represent a wall-to-wall unit of its construction employees. I find that this argument is lacking in merit. In this connection, the record establishes that the Petitioner currently represents employees who perform a wide range of non-traditional craft duties such as those performed by the Employer's employees and the Petitioner has affirmatively expressed its unwillingness to represent all of the Employer's construction employees. Assuming *arguendo*, that the Petitioner's constitution restricts membership to employees engaged in certain craft duties, such a constitutional prohibition does not bar proceeding on this petition. Moreover, the fact that the current contracts to which the Petitioner is a party may cover employees only engaged in plumbing and pipe fitting work is not relevant to whether the Petitioner is qualified to represent the petitioned-for employees. Indeed, the Board has consistently held that it is a labor organization's "willingness, rather than its constitutional ability," to represent employees "which is the controlling factor." *Mayfield Industries, Incorporated*, 126 NLRB 223, 224 (1960). See also *Community Service Publishing*, 216 NLRB 997 (1975); "*M*" *Systems*, 115 NLRB 1316 n. 2 (1956); *Hazelton Laboratories*, 136 NLRB 1609 (1962). Here, as noted above, the Petitioner has expressed its willingness to represent the Employer's employees in any unit found appropriate. Specifically, in *Community Service Publishing*, *supra*, the Board directed an election, in an all employee unit noting that the union had expressed a willingness to represent employees who were not part of its traditional craft jurisdiction. In directing an election in *Community Service*, the Board noted that any certification could subsequently be revoked upon a showing that the union had not complied with its statutory duty to fairly represent the employees in the unit.

The Board upheld without comment my disposition of essentially the same argument presented here by denying the employer's request for review in *Mariah, Inc.*, 322 NLRB 586 (1996). In *Mariah*, the labor organization (Petitioner herein) sought to represent a unit of employees who performed plumbing, pipefitting, heating, air conditioning, and any other work required by the employer and such employees were not identified separately by craft. Like in *Mariah*, I find that the Petitioner is not precluded from representing employees who may not fit its own constitutional craft definitions as long as it expresses a willingness to represent such employees. *Mayfield Industries, Incorporated*, *supra*. See also *Community Service Publishing*, *supra*; "*M*" *Systems*, 115 NLRB 1316 n. 2 (1956) *supra*; *Hazelton Laboratories*, *supra* (1962).

With respect to the appropriateness of the bargaining unit the Board has held that in the construction industry, as in all other settings, the Board determines whether the requested unit is appropriate based on the community of interest among the employees. *Johnson Controls, Inc.*, 322 NLRB 669 (1996), citing *Dezcon, Inc.*, 295 NLRB 109 (1989). In *Johnson Controls*, the Board also noted that, "An appropriate unit in the construction industry need not be limited to a craft or departmental unit so long as the employees sought are a clearly identifiable and functionally distinct group with common interests which are distinguishable from those of other employees." See also, *Del-Mont Construction Co.*, 150 NLRB 85, 87 (1965). Where an initial establishment of a craft or departmental group is sought, as opposed to severance from existing

units that are more comprehensive, the Board applies a general rule or test which it succinctly described in *Burns & Roe*, 313 NLRB 1307, 1308 (1994):

In determining whether a petitioned-for group of employees constitutes a separate craft unit, the Board looks at whether the petitioned-for employees participate in a formal training or apprenticeship program; whether the work is functionally integrated with the work of the excluded employees; whether the duties of the petitioned-for employees overlap with the duties of the excluded employees; whether the employer assigns work according to need rather than on craft or jurisdictional lines; and whether the petitioned-for employees share common interests with other employees, including wages, benefits, and cross-training.

I have considered the above factors in reaching my determination with respect to the unit found appropriate for purposes of collective bargaining in this case.

The Employer is a family owned and operated business. The Employer's president is Timothy Thickstun and his brother Steve Thickstun is the general manager with the responsibility for managing the day to day operation of the Employer. In this capacity Steve Thickstun coordinates the overall allocation of personnel and material resources among the Employer's current project locations. Kenneth Thickstun, the father of Timothy and Steve, is the manager for the Rickenbacker project. However, the record discloses that Kenneth Thickstun also has responsibility for other projects and is not always at Rickenbacker. Supervisor Lawrence Evans is the overall site supervisor for the Rickenbacker project and Welding Supervisor Arthur Brent McCann is in charge of the welding and fitting of pipe on that project. David Evans, David Hannah, and John Wilson are all stipulated supervisors who have worked for the Employer on a number of projects. Shop Manager Robert Collins is also a stipulated supervisor of the Employer. However, it appears from the record that he engages in less direct supervision currently than he exercised in the past.

The Employer's Rickenbacker project is the largest job in terms of dollar volume and manpower allocation on which it has worked. Certain requirements on the project, for example that the stainless steel pipe used be subjected to 100 percent x-ray testing, are atypical of the great majority of the Employer's other projects. Several skilled welders were needed to perform these tasks and the Employer did not initially have a sufficient number of such welders among its existing work force to fulfill these manpower requirements. Thus, a majority of the employees working on the Rickenbacker project were hired specifically for that project. The Employer's role on the Rickenbacker project began in about November 1997 and is projected to conclude in about February 1999. The Employer has stated, however, that it intends to offer many, if not all, of its Rickenbacker employees permanent positions with it at the conclusion of the project.

The welders hired for the Rickenbacker project to perform welds that meet x-ray testing standards are Pete Bock, Raymond Criswell, and Geoffrey Franklin. The principal duty of these welders is to fuse sections of pipe together. Patrick Wicks, Michael Wicks, and John Ervin were also hired for positions at Rickenbacker and principally work as fitters on that project. A fitter is responsible for cutting pipe to the correct dimension, beveling it, cleaning it, and then getting two sections lined up so they can be welded. In addition to working as a fitter, Patrick Wicks is

also skilled in reading blueprints and spends a significant portion of his working hours engaged in layout tasks. Robert Deal and Richard Deal have performed a wide variety of tasks on the Rickenbacker project. Robert Deal is a mechanic whose principal duty is to maintain and repair the Employer's vehicles and equipment. He has performed such work at Rickenbacker as well as at the Employer's shop. At Rickenbacker Robert Deal has also performed various types of laborer duties including, running a crane, running a shovel, running a bobcat, and keeping pumps going. At the shop, Robert Deal sometimes pulls and loads stock for transportation to project sites. Richard Deal, the son of Robert, has worked on the Rickenbacker project operating a shovel and other hand tools. Richard Deal has helped dig holes, bury pipe, and rig temporary pumps for de-watering. Additionally, Richard Deal has driven a dump truck, uses a bob cat to dump gravel back in the trenches, keeps equipment fueled, and for about 1 month before the hearing has been engaged in fitting pipe. Of the eight full-time employees who have worked at Rickenbacker, Robert Deal, Richard Deal, Patrick Wicks, and possibly Michael Wicks have worked either in the Employer's shop or at other of its project locations. With the exception of the Deals, Kenneth Thickstun hired all the employees who have worked at Rickenbacker. Welding supervisor McCann concurred in the hiring of the Rickenbacker employees and was responsible for administering all testing required of such employees.

Part-time employees Richard Evans and Eric White are also employed on the Rickenbacker project. The record discloses that they too have performed a wide variety of tasks on the project. In this regard, Evans is an experienced equipment operator and has operated a backhoe on the projects. Additionally, Evans has performed general laborer tasks including shoveling, moving gravel, and running a level. White performs the same type of general laborer duties as Evans with the exception that he does not operate a backhoe. It appears that Evans and White do not perform or assist in the performance of any pipefitting work.

In addition to the above employees, who are currently employed, for the most part, on the Rickenbacker project, the Employer has a number of other employees who are working, or have worked, for it at various other locations and whom the Employer describes as its "core" employees. James Alexander has worked for the Employer for a number of years and performs many general laborer tasks. Alexander has engaged in digging, moving gravel, pulling wire and pipe, tightening down equipment, building concrete forms, tying rebar, pouring and spreading concrete, painting, simple wiring, spreading grass seed and picking up rocks, and pushing a broom. Alexander also assists with pipefitting to a limited extent by holding pipe. Wayne Boyer also performs a variety of tasks for the Employer, including running a loader, backhoe and other equipment, building concrete forms, tying rebar, pouring concrete, installing and pulling wire through it; and programming leak detection systems. Danny Daniels apparently performs the same types of tasks as Boyer and, in addition, has been trained to clean and paint tank linings with an anti-corrosive agent. Daniels also crimps pipe together and operates a backhoe.

Nate Kelsor usually works in the Employer's shop where he welds pipe and supports, bends and installs conduit, and installs gauges - apparently on pump skids. Steve Shoemaker is certified to make x-ray welds and he is capable of performing a wide variety of tasks for the Employer, including electrical wiring and general laborer work. However, he works mostly as a welder.

Randall Phipps is primarily engaged in supervising and performing the construction of pump skids and fuel dispensers for the Employer in its shop. Phipps also performs site project work installing and welding pipe, placing pulsars on fuel dispensers, and repairing leaks in pumps and filters. Aaron Tinney and Michael Wilson work primarily in the Employer's shop under the direction of Phipps, who hired them. Both work as laborers fabricating pump skids. Tinney also performs other duties, including sweeping up, painting, grinding, cutting, pulling concrete, and other general laborer tasks. Wilson also has other duties including painting, using a hand shovel, finishing concrete, outfitting tanks with accessories and getting them ready to be shipped.

The record discloses that of the Employer's nine "core" employees all have worked on the Rickenbacker project with the possible exception of Tinney and Wilson. Four of those employees, Boyer, Kelsor, Phipps, and Shoemaker, have performed welding or pipefitting work on that project and, at least, some of these employees worked on the project for substantial periods of time. However, the record does not disclose the precise amount of time spent on the Rickenbacker project by the Employer's "core" employees.

The Rickenbacker project is a prevailing wage project. Accordingly, the welders on the project and other employees with specialized skills are paid about \$22 an hour. Employees who are primarily performing a range of general laborer work are paid about \$16 an hour. When the Employer's "core" employees work at Rickenbacker or other prevailing wage projects, they receive the prevailing wage rate. The employees who work in the shop receive a somewhat lower rate of pay. The Employer's shop wage range is between approximately \$7.50 an hour to \$12 or \$13 an hour. When the Employer's "core" employees work on non-government or private projects they receive the lower shop rate plus an additional \$1 an hour if the project is located out of town.

Some of the Employer's "core" employees regularly travel out of town to project locations where overnight stays are required. Other of its "core" employees travel overnight on an infrequent basis. The employees who were hired specifically for the Rickenbacker project have generally not been required thus far to work on other projects requiring overnight stays.

The day to day control of the Employer's personnel is handled generally by Steve Thickstun, but it appears that personnel movement between the Employer's shop and its project locations is also the responsibility of Timothy Thickstun and is determined by the Employer's needs. Kenneth Thickstun, as previously noted, hired many of the Employer's Rickenbacker employees. Steve Thickstun hired Robert Deal and Richard Deal, who work at Rickenbacker as well as at other locations. The record reflects that Phipps hired Tinney and Wilson primarily for the purpose of assisting in the fabrication of pump skids at the Employer's shop. The Employer does not have a formal training or apprenticeship program. However, the record discloses that it does select and send certain of its employees for training in specialized skills such as leak detection.

Contrary to the Petitioner's position, it is clear on the record that the Employer's employees who perform pipefitting and welding work do not constitute a clearly identifiable and functionally distinct craft group with common interests that distinguish them from the

Employer's other employees. *Johnson Controls*, supra, *Del-Mont Construction*, supra. Rather, the record shows that the work of the employees who perform substantial pipefitting or welding tasks is functionally integrated with the work of the other employees. More significantly, many of the employees whom the Petitioner would include as "craft" employees perform a range of tasks covering the spectrum of what is required for the manufacture and installation of the Employer's product. Indeed, the record clearly establishes that the duties of the employees whom the Petitioner would group in the "craft" unit overlap the duties of the employees whom it would exclude from the unit. Moreover, the record discloses that the Employer assigns work according to need rather than on craft or jurisdictional lines. The Employer has no formal training or apprenticeship program and the "craft" employees share common interests with other employees as demonstrated by the substantial interchange that occurs among all of the employees and their similar wages and working conditions. See, *Burns & Roe*, supra. Accordingly, I conclude, in agreement with the Employer, that a unit limited along craft lines is not appropriate.

I turn now to a consideration of whether the Employer is correct in its argument that its "core" employees and those who work primarily at the Rickenbacker project constitute separate appropriate units. At the outset, I note that I cannot agree with the Employer's assertion in brief that its "core" employees and those who work on the Rickenbacker project must be represented in separate units, particularly in view of the substantial interchange of employees between Rickenbacker, the Employer's shop, and even on other projects. Many of the criteria that I examined above in addressing the appropriateness of a craft unit are also applicable to the question of whether a multisite unit is appropriate in this matter.

It is well settled that the Board examines traditional community of interest criteria in determining single versus multi-site unit issues in the construction industry. See, *Oklahoma Installation Co.*, 305 NLRB 812 (1991). Accordingly, and as found above, I note here that there is no bargaining history in a lesser unit and the Employer's operations are functionally integrated as employees in the shop manufacture equipment for installation at project sites and may themselves be assigned to work in the field operations. Although the Employer's employees exhibit a significant range of skills, employees who possess a greater degree of skill can be found among the Employer's "core" employees as well as among those employees who were initially hired specifically for the Rickenbacker project. Labor relations and supervision are not entirely centralized but labor policies are not determined and administered on a project by project basis. In this connection, I note that while Kenneth Thickstun is the project manager for the Rickenbacker project, he also has responsibility over other projects to which "core" employees are assigned. Likewise, although Brent McCann is in charge of supervising the welding at Rickenbacker he is not always at that location because his skills are occasionally needed on other projects. Lawrence Evans is the general supervisor for the Rickenbacker project. It appears that Evans has been on this project since its inception but he may have infrequently worked on other projects during that time-frame. Hiring and the ability to discipline employees emanates from several sources. Finally, as noted previously, there has been substantial interchange of employees among the Employer's construction projects and its shop. *Dezcon, Inc.*, supra, *Oklahoma Installation Co.*, supra. Accordingly, I find that all the Employer's construction employees, including those assigned to the Rickenbacker project may be represented in a single multisite unit. In reaching this decision, I note that a unit need only be

appropriate for bargaining and there is no requirement that it be the only or most appropriate unit. *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950).

In its brief, the Employer cites *Cleveland Construction Company v. NLRB*, 44 F.3d 1010 (D.C. Cir. 1995); *The Longcrier Company*, 277 NLRB 570 (1985); and *Tempo, Inc.*, 235 NLRB 204 (1978), in support of its position that its “core” employees and those employed on its Rickenbacker Air Force Base project cannot be included in the same unit and must be separately represented. Each case is, however, distinguishable from the subject one.

In *Cleveland Construction*, the Court of Appeals for the D.C. Circuit refused to enforce the Board’s bargaining order on the ground that the multisite unit covering all carpenters employed by the employer in two separate geographic areas was not appropriate. In reaching its decision, the Court relied, in substantial part, on the fact that the parties had a prehire agreement affecting only the carpenters employed by the employer on a V.A. hospital project in one geographic area and, therefore, “the parties’ bargaining history did not support the establishment of a multisite bargaining unit.” In addition, the Court noted that the employees on the V.A. hospital project received different benefits than other employees. Moreover, there was no evidence in *Cleveland Construction* that employees from other projects worked at the V.A. hospital or that employees assigned to the V.A. hospital project would be assigned to other jobs upon the completion of the hospital assignment. Here, there is no history of collective bargaining affecting any of the Employer’s employees. Moreover, the record discloses that some “core” employees are assigned to the Rickenbacker project and all employees receive similar benefits. The record also reflects that the Employer intends, if possible, to offer employees currently working at the Rickenbacker Air Force Base jobs at other sites upon completion of Rickenbacker project.

Likewise, *Longcrier* is inapposite with respect to the issue of whether all employees of the Employer, including those working on the Rickenbacker project, may constitute a single appropriate unit for the purposes of collective bargaining. In *Longcrier*, the Board concluded that a countywide unit of the employer’s construction operators was not appropriate. Instead, the Board found that each project constituted a separate appropriate unit. However, in *Longcrier*, unlike here, each project functioned as an independent and autonomous operation and the employer did not maintain a common nucleus of employees. More importantly, in *Longcrier*, there was no transfers of employees between projects and when a project was finished, the employees were terminated. Here, the Employer has a nucleus of employees who are retained from project to project and the evidence discloses that the Employer intends to retain, if possible, those employees hired for the Rickenbacker project.

Finally, *Tempo* does not advance the Employer’s position. In *Tempo*, the Regional Director found that a unit comprising the employer’s carpenters and carpenters’ apprentices employed in the upper peninsula of Michigan to be appropriate for the purposes of collective bargaining. In *Tempo*, the record disclosed that the employer had only two projects in the upper peninsula of Michigan. Moreover, these two projects were the only jobs that Tempo had obtained in this geographical area in 12 years and it had no plans for any new work in that area. Finally, the evidence disclosed that Tempo hired employees locally and that rank-and-file employees were not retained from project to project. The Board relying on these factors found,

contrary to the Regional Director, that the only appropriate unit must be confined to Tempo's two current projects. Here, the Employer maintains a permanent work force and employees are retained from project to project. Moreover, employees may be transferred from job to job and the evidence discloses that the Employer intends, if possible, to retain those employees working at the Rickenbacker Air Force Base upon completion of that project.

Based on the foregoing, the entire record and careful consideration of the arguments of the parties at the hearing and in their briefs, I find that a multisite unit of the Employer's construction employees, including employees working at its Rickenbacker project, is appropriate for the purposes of collective bargaining. Accordingly, I shall direct an election among the employees in such unit.

SUPERVISORY STATUS OF RANDALL PHIPPS:

There remains for consideration the unit placement of Randall Phipps, whom the Employer, contrary to the Petitioner, would exclude from the unit as a supervisor within the meaning of Section 2(11) of the Act. The record reflects that since about February or March 1998, Phipps has been in charge of the Employer's shop where he supervises the manufacture of fuel dispensers and pump skids. In this capacity, Phipps chooses the sequence of the work and directs employees working under him to perform certain aspects of the work. Phipps then reviews the work of the employees assembling these devices to ensure the integrity of the product. Phipps sometimes has four employees working under his immediate supervision in the shop: Tinney, Wilson, Kelsor, and Shoemaker.

Phipps spends about 90 percent of his work time in the Employer's shop. The remaining 10 percent of his time is spent on the Employer's project sites. Phipps also directs and supervises the work of other employees at least some of the time he spends working "in the field." The exception is at the Rickenbacker project where he does not have any supervisory duties.

Phipps has the authority to authorize overtime for employees in the shop. Phipps may also authorize overtime while working on projects other than at Rickenbacker. However, Phipps apparently must have the overtime authorized, reviewed and confirmed by higher authority unless in his judgment it is critical to make the decision to have overtime performed on the spot. Phipps may also schedule early start times in the shop as he deems necessary and without consulting higher authority.

Phipps receives between \$12 and \$13 an hour while working in the shop, a rate that places him at or above the shop rate of all of Employer's non-supervisory employees. Phipps has the authority to hire, discharge and discipline employees. Although there is no record evidence that Phipps has actually disciplined or discharged employees, he has, as previously noted, hired two employees, Tinney and Wilson. In this regard, Phipps advised the Employer that he needed additional employees to assist in the manufacture of skids and to perform other work in its shop. Phipps told Steve Thickstun that he wanted to hire Tinney and Wilson and Thickstun agreed without independently interviewing them or even talking to them prior to their hire.

Based on the above, the record as a whole, and careful consideration of the arguments of the parties at the hearing and in their briefs, I conclude that Phipps is a supervisor within the meaning of Section 2(11) of the Act. Indeed, Phipps has exercised several of the indicia supervisory authority, including utilizing independent judgment to assign employees, to responsibly direct them, and to hire them. In reaching this conclusion, I noted the Petitioner's argument, in its brief, that Phipps exercises only isolated or sporadic supervisory duties. The record simply does not support such an interpretation of Phipps status. Accordingly, I shall exclude Phipps from the unit as a supervisor within the meaning of Section 2(11) of the Act.

APPLICATION OF THE DANIELS/STEINY FORMULA:

The Employer asserts, in its brief, that the eligibility formula set forth in *Steiny and Company, Inc.*, 308 NLRB 1323, 1327 (1992), should not be utilized in this case. In making this argument the Employer asserts that it does not maintain a cadre of laid off employees. However, the Board in *Steiny* rejected the grafting of additional criteria to determine the applicability of the eligibility formula involving construction industry employers set forth in *Daniels Construction Co.*, 133 NLRB 264 (1961). In rejecting such an approach the Board noted:

Because there is admittedly some degree of variety among construction employers and their hiring patterns, any attempt to distinguish between employers requires an elaborate and burdensome set of criteria to be applied and litigated at each hearing. These criteria, for example, must distinguish between employers who hire project-by-project, and those who have a so-called stable or core group of employees. The employers with a stable group would presumably resemble industrial employers and, perhaps, obviate the need for the *Daniel* formula. Our experience, however, indicates that the line between these two types of employers is not distinct. Indeed, many employers are a hybrid of these two models of employment. Moreover, such criteria also would have to define the proper period for examination of the employer's records regarding hiring and layoff 'patterns.' Even assuming that reasonable criteria could be established, we believe the litigation required at the hearing would be an undue burden on the parties and the Board.

Accordingly, as the Employer is engaged in the construction industry, pursuant to the Board's general policy, I shall establish a formula for determining those employees eligible to vote in the election. *Steiny and Company, Inc.*, 308 NLRB 1323, 1327 (1992); *Daniel Construction Co.*, 133 NLRB 264 (1961). Eligible to vote are those employees covered by the formula set forth in the Direction of Election.

STIPULATED SUPERVISION:

The parties are in agreement, and/or the record shows, that the following individuals possess various indicia of supervisory authority within the meaning of Section 2(11) of the Act and are supervisors within the meaning of the Act: President Timothy Thickstun; General Manager Steve Thickstun; Welding Supervisor Arthur Brent McCann; Construction Supervisor Lawrence Evans; Project Manager Kenneth Thickstun; Shop Manager Robert Collins;

Supervisors David Evans, David Hannah, and John Wilson. Accordingly, I shall exclude them from the unit.

THE UNIT:

Based on the foregoing, the record as a whole and careful consideration of the arguments of the parties at the hearing and in their briefs I shall direct an election among the employees in the following bargaining unit:

All full-time and regular part-time employees of the Employer, including those on its Rickenbacker and other projects and its shop, excluding all office clerical employees, guards and supervisors as defined in the Act

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Also eligible to vote shall be all employees in the unit who have been employed for a total of 30 working days or more within the period of 12 months preceding the eligibility date for the election or who have had some employment in that period and who have been employed 45 working days or more within the 24 months immediately preceding the eligibility date for the election and who have not been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed. *Steiny and Company, Inc.*, 308 NLRB 1323, 1327 (1992); *Daniel Construction Co.*, 133 NLRB 264 (1961). Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by the Plumbers & Pipefitters Union Local 189, AFL-CIO-CLC.

LIST OF ELIGIBLE VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters using full names, not initials, and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v.*

Wyman-Gordon Company, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB No. 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names, not initials, and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **December 18, 1998**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **December 28, 1998**.

Dated at Cincinnati, Ohio this 11th day of December 1998.

/s/ Richard L. Ahearn

Richard L. Ahearn, Regional Director
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